

STATE OF MICHIGAN
COURT OF APPEALS

SHEILA TOLBERT,

Plaintiff-Appellee,

v

SCOTT ISHAM,

Defendant-Appellant.

UNPUBLISHED

May 29, 2003

No. 231424

Genesee Circuit Court

LC No. 98-063265-NI

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

COOPER, P.J. (*concurring in part and dissenting in part*).

I concur with my esteemed colleagues that this case should be reversed and remanded because it was an abuse of discretion to enter a default judgment as a sanction against defense counsel for his inability to appear at trial due to a conflict between scheduled trials. As noted in the opinion, “[o]ur legal system favors disposition of litigation on the merits.” *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995).

Why then would we grant a summary disposition in favor of the defendant when defendant failed to even include this issue in the “Statement of Questions Presented” in his brief on appeal? An issue not included in the statement of questions presented waives appellate review. MCR 7.212(C)(5). The review of whether plaintiff suffered a serious impairment of a bodily function in this case is therefore inappropriate. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 634; 567 NW2d 468 (1997).

/s/ Jessica R. Cooper